

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IOWA DEPARTMENT OF CORRECTIONS,

Employer

and

Dr. Russell Collins,

Appellant

ADJUDICATOR'S DECISION

87-MA-23

Appearances

For the Department of Corrections:

Larry Brimeyer, Representative
John Sissel, Assistant Warden
Dale Vargason, Correction Officer
Lori Spargur, Dental Assistant

For the Appellant:

Dr. Russell Collins, Appellant

I. JURISDICTION

Pursuant to IOWA CODE 19A.14 (The Code) a suspended employee may appeal the decision of the appointing agency to the Public Employment Relations Board (the Board) within thirty calendar days of the suspension. Dr. Russell Collins was suspended without pay from employment as a Dentist at the Men's Reformatory located at Anamosa, Iowa. The period of the suspension was seven working days, commencing on January 13, 1987 and ending at 7:00 a.m. on January 12, 1987. The appointing authority denied his appeal on January 12, 1987. Dr. Collins filed a timely appeal with the Board on February 10, 1987. The hearing was held in Des Moines, Iowa on March 30, 1987, and the hearing was tape recorded. The parties did not file briefs.

II. EXHIBITS

Dept. of Corrections Exhibit #1 - Suspension Letter issued January 13, 1987.

Dept. of Corrections Exhibit #2 - Personnel Review Committee Report issued January 12, 1987.

III. ISSUE

The issue for resolution in this case is as follows: Was Dr. Russell Collins suspended for just cause; and if not what shall be the appropriate remedy?

IV. RELEVANT DEPARTMENT PERSONNEL POLICIES AND PROCEDURES

A. Iowa State Men's Reformatory General Rules of Employee Conduct

1. Introduction and Philosophy (in relevant part)

The Rules of Conduct apply to all personnel assigned to or who provide services to the Reformatory regardless of classification or pay status. Everyone will be knowledgeable of these rules and abide by them, as well as all laws, and the regulations of the Department of Corrections and all other regulatory agencies such as the Iowa Merit Employment Department. Failure of an employee to follow these rules will result in appropriate corrective measures being taken. The degree of discipline that may result in any given instance will be determined in light of security impact, culpability, past performance and discipline record, length of service, etc...

1. Section B

Rule 10. While on duty, employees will not engage in any activities unrelated to their duties.

2. Section C

Rule 12. Employees are required to report promptly for duty at the designated time and place and by fully able to perform their duties. Employees are required to remain on their post, fully alert and attentive until relieved, noting any unusual situations, gatherings, conversations, or events; immediately report them to a higher authority, and take appropriate action. Employees found to be asleep while on duty are subject to immediate discharge.

V. BACKGROUND AND FACTS

Based upon a stipulation at the hearing and the exhibits, I find the following facts to be relevant.

1. The Appellant, Dr. Russell Collins, has been employed at the Iowa State Men's Reformatory as a Dentist since July 7, 1967.

2. On September 27, 1985 Dr. Collins was furnished, and signed for, a copy of the Iowa State Men's Reformatory General Rules of Employee Conduct.

3. On December 29, 1986, Correction Officer Dale Vargason filed an "Incident Report Form" stating that during the treatment of an inmate Dr. Collins on two occasions lowered his head and closed his eyes. The Dental Assistant, Lori Spargur, on one occasion called to Dr. Collins and on the other occasion nudged Dr. Collins.

4. On December 29, 1986 Mr. John Sissel, Assistant Warden, met with Dr. Collins to discuss the "Incident Report".

5. Mr. Sissel informed Dr. Collins that he was relieved of duty and would see no more patients until he had contacted a physician who was to determine if Dr. Collins suffered from any physical condition that would cause him to have a "tendency to nod off."

6. On December 31, 1986 Dr. Collins was examined by Dr. Wayne Alberts. Dr. Alberts, in summary, found that Dr. Collins did not suffer from any physical abnormalities that would cause any "absence spells".

7. On January 12, 1987 Dr. Collins appeared before the Personnel Review Committee. This committee recommended that Dr. Collins be suspended from work, without pay for a period of six days and that if there was a any future occurrence of a similiar nature that Dr. Collins' employment be terminated.

8. Mr. Calvin Auger, Warden, reviewed the decision of the Personnel Review Committee and modified the suspension period from six days to seven days.

9. Dr. Collins was given a letter on December 13, 1987 informing him of the decision to suspend him for a period of seven days.

VI. CONCLUSIONS OF LAW

Section 19A.14(1) of the Code confers jurisdiction upon the Board to hear employee appeals.^{1/} The Code designates that the Board's review of disciplinary actions:

...shall be based upon a standard of just cause. If the Public Employment Relations Board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age or any other reasons not constituting just cause, the employee may be reinstated benefits for the elapsed period or the Public Employment Relations Board may fashion other appropriate remedies.

The issue in the instant case is whether the appointing authority had just cause to discipline Dr. Collins. The just cause standard requires that a determination be made as (1) whether a just cause for discipline exists and, if so, (2) whether the severity of the discipline was appropriate under the circumstances.^{2/}

On January 13, 1987 Dr. Collins was suspended for seven days without pay for allegedly sleeping on the job and/or being inattentive to job duties on December 29, 1986. Dr. Collins disputes this allegation and contends that at no time was he sleeping. He does admit that he had his head down and that he had closed his eyes for a short period of time. He also admits that Dental Assistant, Lori Spargur, did call to him on one occasion to signal she had finished her preparations and did touch him on another occasion for the same purpose. He argues, however, that he had his head down to relieve the tension

1/ See also, Section 20.1(3) IOWA CODE (1987)

2/ See Elkouri and Elkouri, How Arbitration Works, p. 621 (1973).

from being bent over working on a patient and that he closed his eyes to rest them and that he was fully awake and conscious of the activities in the immediate area.

Ms. Spargur testified that on the two occasions that required her to get Dr. Collins attention he responded at once, resumed the procedure and did not appear to have been sleeping. Her testimony indicated he was completely alert when he responded. She stated that Dr. Collins only lowered his head during short periods of time when she was involved in the preparation of instruments that would be used in the next step of the treatment procedure. She testified that she could not definitely state that Dr. Collins had or had not been sleeping, as she was facing a different direction.

Mr Dale Vargason, the Correction Officer who filed the Incident Report Form that resulted in the suspension of Dr. Collins, testified that during the short period of time that Dr. Collins had his head down and eyes closed that he could not have fallen asleep.

I find no credible evidence, in either the written documents entered into the record or the testimony of the witnesses, that would support the conclusion that Dr. Collins was asleep at any time during the alleged incident. Indeed, the entire record, with regard to this issue, is replete with suppositions, speculations and tenuous conclusions. Even Mr. Vargason, the individual who filed the Incident Report that ultimately led to the imposition of the suspension, admitted that Dr. Collins could not have fallen asleep during the short period of time that he lowered his head.

The Employer argues that even if Dr. Collins was not asleep he was inattentive to duty and thus subject to discipline. However, the employer introduced no evidence that demonstrated in what manner Dr. Collins was inattentive to his duties as a Dentist. The Employer argued that inattentiveness could lead to the escape of a inmate. The evidence indicates that when Dr.

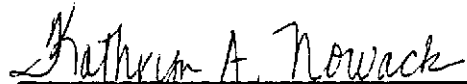
Collins is required to treat an inmate that poses a security risk, that inmate is escorted to Dr. Collins' office by a Correction Officer who remains present during the course of the treatment. Further, the record indicates that when Dr. Collins treats non-security risk inmates, the normal course of his duties may require that he leave an inmate unattended for a short period of time (i.e., to take x-ray photographs).

I find no evidence that supports a disciplinary action of a seven day suspension without pay for either the charge of sleeping while on duty or for inattentiveness to duty. Therefore, I find that the Appellant was improperly suspended without pay for a period of seven days.

VII. AWARD

I find the appropriate remedy for the improper suspension is for Dr. Collins to be made whole for lost wages during the period of the suspension plus interest accruing at a rate of ten percent, compounded quarterly, from January 13, 1987 through the Appellant's receipt of the total amount.

DATED at Des Moines, Iowa this 20th day of May, 1987.


KATHRYN A. NOWACK, ADJUDICATOR